SBCivil Writ Petition No.985/2005

Satyanarayan
Vs.
State of Rajasthan & Ors.

Date of Order :: 9th October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Manish Pitalia, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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The petitioner retired from services of the respondents on 31.5.2002 while holding the post of Senior Teacher. At the time of retirement the respondents under the gratuity payment order deducted a sum of Rs.49,315/- under the head of departmental recoveries. Being aggrieved by the same the petitioner has preferred this petition for writ.

In reply to the writ petition it is stated by the respondents that the petitioner was not entitled for additional increments given to him being having B.Ed. Degree. The stand of the respondents as taken in reply to the writ petition reads as under:-

> "It is further submitted that the petitioner had already been given benefit of advance increment on account of B.Ed. at the time of fixation of pay scale in the year 1986. Since the IIIrd Grade teachers are entitled for this benefit only in the pay scale and no in the individual pay and the Assistant Account Officer Directorate, Bikaner has clarified the whole position by his letter dated 21.4.1995.

> It is also mention here that since the increment has wrongly been given to the petitioner and, therefore, the pay sale as on 1.9.88, 1.9.1989 and 1.9.1990 were modified and the pension case of the petitioner was not completed accordingly and the same was finalised on 9.7.2002."

From the facts stated in reply to the writ petition it is apparent that additional increments though erroneously given to the petitioner were not extended due to any misrepresentation on his part, the respondents may determine pension of the petitioner by withdrawing the additional increments if give erroneously but have no authority to recover the amount already paid to the petitioner bonafidely. It is well settled that an amount given erroneously to a government servant without any misrepresentation or mischief on part of the employee concerned, then the same is not required to be recovered.

In view of it this petition for writ deserves acceptance. Accordingly, the same is allowed. The respondents are directed to make payment of the sum of Rs.49,315/- recovered from gratuity of the petitioner with interest @ 6.5% per annum within a period of three months from today.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.